

BEFORE THE
BOARD OF EDUCATION
CHINO VALLEY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2012020763

SHERRY ALVAREZ, et al.,

Respondents.

PROPOSED DECISION

On April 3, 2012, in Chino Hills, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Margaret A. Chidester and Ashleigh M. Rollins, Attorneys at Law, represented the Chino Valley Unified School District.

Carlos R. Perez, Attorney at Law, represented the respondents set forth on Exhibit A attached hereto.

Anthony Poletti represented himself.

At the hearing, the District withdrew the layoff notice and dismissed the accusations against Lisa Bader, Daura Beard, Amber Condit, and Laura Iacopetti.

The matter was submitted on April 3, 2012.

FACTUAL FINDINGS

1. On March 6, 2012, Norm Enfield, Assistant Superintendent of the Chino Valley School District (hereafter, "the District"), made and filed the accusations against respondents in his official capacity.

2. Respondents are certificated employees of the District.

3. Before March 15, 2012, pursuant to Education Code sections 44949 and 44955, Mr. Enfield notified the Board of Education (hereafter, “the Board”) of the District of his recommendation that respondents be notified their services will not be required for the ensuing school year. His notification to the Board set forth the reasons for the recommendation.

4. On or before March 15, 2012, each respondent was given written notice that the Superintendent had recommended that notice be given to respondents, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing year. Each written notice set forth the reasons for the recommendation. The notices satisfied the requirements of sections 44949 and 44955. *San Jose Teachers Association, Inc. v. Allen* (1983) 144 Cal.App.3d 627, 632; *Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 803-04, distinguishing *Karbach v. Board of Education* (1974) 39 Cal.App.3d 355, 360-63.

5. Each respondent timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year. Accusations were timely served on respondents, and each respondent filed a timely Notice of Defense. All pre-hearing jurisdictional requirements have been met.

Resolution

6. The Board on February 16, 2012 took action in Resolution No. 2011/2012-37 to discontinue certain services for the 2012-13 school year totaling 105.25 FTEs. On March 8, 2012, the Board amended the resolution and adopted First Amended Resolution 2011/2012-45 to discontinue the following services for the 2012-13 school year:

(1.1)	8	K-8 Classroom Teaching Positions	(8.00 FTE)
(1.2)	8	Elementary Assistant Principals	(8.00 FTE)
(1.3)	4	Junior High Assistant Principals	(4.00 FTE)
(1.4)	1	Buena Vista/CVLA Assistant Principal	(1.00 FTE)
(1.5)	3	High School Assistant Principals	(3.00 FTE)
(1.6)	1	High School Home Economics Teacher	(1.00 FTE)
(1.7)	1	Elementary Mild/Moderate SDC Teacher	(1.00 FTE)
(1.8)	1	High School Intervention Counselor	(1.00 FTE)
(1.9)	25	Counselors	(25.00 FTE)
(1.10)	7	Junior High Intervention Counselors	(7.00 FTE)
(1.11)	2	Junior High Physical Education Teachers	(2.00 FTE)
(1.12)	1	High School Biology Teacher	(1.00 FTE)
(1.13)	1	High School Physical Education Teacher	(1.00 FTE)
(1.14)	9	Elementary Music Teachers	(9.00 FTE)
(1.15)	1	Elementary/Junior High Music Teacher	(1.00 FTE)
(1.16)	1	Junior High Chorus Teacher	(1.00 FTE)
(1.17)	1	High School Librarian	(1.00 FTE)
(1.18)	19	School Nurses	(19.00 FTE)
(1.19)	3	Adult High School/GED Teachers	(3.00 FTE)
(1.20)	1	Adult School ESL Teacher /ESL Coordinator	(1.00 FTE)

(1.21)	4	Adult School ESL Teachers	(4.00 FTE)
(1.22)	1	Adult School Counselor	(1.00 FTE)
(1.23)	.25	Adult School Citizenship Teacher	(.25 FTE)
(1.24)	1	TOA Program Improvement	(1.00 FTE)
(1.25)	1	TOA Technology	(1.00 FTE)
(1.26)	1	TOA – ELD – Wickman ES	(1.00 FTE)
(1.27)	1	TOA – Intervention – Chaparral ES	(1.00 FTE)
(1.28)	1	TOA – Intervention – Cortez ES	(1.00 FTE)
(1.29)	1	TOA – Intervention – Dickey ES	(1.00 FTE)
(1.30)	2	TOA – Intervention/ELD Dickson ES	(2.00 FTE)
(1.31)	1	TOA – Intervention – Marshall ES	(1.00 FTE)
(1.32)	1	TOA – Intervention – Walnut ES	(1.00 FTE)
(1.33)	1	TOA – Intervention – Glenmeade ES	(1.00 FTE)
(1.34)	1	TOA – Intervention – Borba ES	(1.00 FTE)
(1.35)	1	TOA – Intervention – Newman ES	(1.00 FTE)

Total 116.25 FTE

The services set forth above are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. *California Teachers Association v. Board of Trustees of the Goleta Union School District* (1982) 132 Cal.App.3d 32, 34-37 and cases cited therein. *See also San Jose Teachers Association v. Allen, supra* at 635-38, in which the court specifically rejected the reasoning of *Burgess v. Board of Education* (1974) 41 Cal.App.3d 571; *Zalac v. Governing Board* (2002) 98 Cal.App.4th 838, 853-54.

Furthermore, these services may be reduced because of budgetary difficulties. *Zalac v. Governing Board, supra*, and cases cited therein. The decision to reduce or discontinue the services is neither arbitrary nor capricious but rather a proper exercise of the District's discretion.

7. No certificated employee junior to any respondent is retained to perform services which any respondent is certificated and competent to render.

8. The reduction or discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees of the District as determined by the Board.

9. The Board considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

Seniority List

10. The District created a Seniority List which contains employees' seniority dates (first date of paid service), site, status, FTE, subjects, position title, credentials, and authorizations. The District used the Seniority List to develop a proposed layoff of the least senior employees currently assigned in the services being reduced. The District then

determined whether the least senior employees held credentials in another area and were entitled to “bump” other employees. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could “bump” other employees.

Nursing Services

11. Norm Enfield, Ed.D, the assistant superintendent for human resources for the District, testified on behalf of the District. He explained that the District was facing a deficit of more than \$1,900,000.00 over the ensuing two years, and that shortfall required the Board to make cuts in services. One of the largest cuts the Board chose to make was in nursing services; it eliminated 19 school nurse positions. He pointed out that several services nurses provided for the District were mandated, such as vision screening, scoliosis screening, maintaining health records, and so forth. With the elimination of school nurses, the District looked into how other school districts in the area obtained nursing services. Mr. Enfield testified that the human resources department contacted every school district in Orange and San Bernardino counties, and found a wide variance in how they obtained nursing services. Some districts used licensed vocational nurses (LVNs) and others contracted with other agencies to provide the services.

Mr. Enfield testified the District had not decided how exactly it would provide the nursing services required by statute. He indicated the District expected to train assistant principals to perform vision screening and noted that LVNs were frequently used in other districts to give insulin injection to diabetics. He expected that office staff would handle parent notifications. In Mr. Enfield’s opinion, none of the services that nurses perform required a school nurse credential.

Mr. Enfield testified that the reason the Board chose to entirely eliminate school nurses was because of the contract the District had with its teachers. He explained that the contract required a ratio of 2000 students or less to one school nurse, and that if the District reduced the number of school nurses below the number needed to maintain that ratio, it would not be in compliance with contract. One way to avoid that was to eliminate all the nursing positions, and that is the road the Board chose.

12. Susan Parks has been a school nurse with the District for 12 years. She testified at the hearing and described the numerous services nurses perform for the District, including medication management, training technicians and teachers, CPR and first aid training, TB clinics, interacting with physicians, managing diabetics, providing specialized treatment for students such as tracheotomies and epi pens, maintaining health records, helping to develop IEPs, telephone triage, eye exams, and so forth. She testified that there is a considerable difference in the level of expertise between an LVN, which requires only one year of training and who must work under the supervision of a registered nurse, and a school nurse who must be a registered nurse with a bachelor’s degree and a credential. She pointed out that she has been a nurse for 34 years and worked in hospitals for 20 years. She did not

believe that a person could be trained to perform an eye exam in a six-hour course as the District proposed.

Counseling Services

13. The Board determined it would eliminate all of its counselors at the elementary, junior high, and high school levels, including seven junior high school intervention counselors. Mr. Enfield testified the reason the Board determined to eliminate all counselors rather than reduce the number was the same as for nurses, i.e., a provision in the contract that required a ratio of 450 students to one counselor. Again, rather than violate the terms of the contract, the Board chose to eliminate all counseling positions.

Mr. Enfield described the services counselors currently performed and explained that those services would be performed by other staff at the school site. He expected counseling technicians would provide many of the services performed by counselors and other administrators would perform services as they are able. He recognized it was not an ideal solution and that some services performed by counselors would not be performed at all, but he testified it saved a great deal of money and was necessary.

14. Anna Purcell is a counselor at Chino High School and has served as a counselor for 11 years. She testified that the services of a counselor are extremely important, and in some cases involved life and death situations. She pointed out the counselors schedule a student's classes and more importantly, analyze what classes the student should take. She noted that counselors are familiar with how colleges operate and with that knowledge helped students make informed decisions about their futures. She testified that she has a bachelor's degree and master's degree as well as a credential, and worked in business for 15 years before becoming a school counselor. She did not believe that counseling technicians or other school administrators were capable of performing the duties of a credentialed counselor, and noted that technicians were clerical, data entry jobs performed by classified employees who did not have the training and experience that counselors had.

Music Teachers

15. Anne Robb is a band director at Townsend Junior High School with nearly seven years of experience. She is subject to layoff by virtue of the Board's decision to reduce Elementary/Junior High Music Teacher by one FTE. She pointed out that will be bumped from her position by Karen Cuen, who has nearly 19 years of seniority as a music teacher at the elementary school level. They hold the same credential, music single subject. Ms. Robb did not believe that the District should have allowed Ms. Cuen to bump into her position because she is not as well qualified to perform the duties of a music teacher at a junior high school. She testified that the position she holds is site specific and includes far more than classroom duties. Ms. Robb testified she directs a class band, a marching band, a color guard, a jazz band, a drum line, a choir, and a wind ensemble, and manages a staff of five coaches. She added that she also does fundraising and oversees a budget of \$65,000.00 that funds these activities. She indicated that there were several competitive programs that

she directed and they had been highly successful. She did not believe that Ms. Cuen had the skills and the experience she had to perform all of these duties.

16. Sean Jenkins is a music teacher at Magnolia, a band director, and works with the marching band, a color guard, and a percussion program. He has nearly 10 years of seniority with the District and has been teaching in this field for 15 years. He has a bachelor's degree and a master's degree and is working toward a doctorate degree at USC. He has been an assistant band director at USC. His position is subject to layoff, and he will be bumped by Michael Noffsinger, who has been with the District since 1989. Mr. Jenkins testified his position was heavy on instrumental music and believed that Mr. Noffsinger was a chorale specialist and did not have the mastery of instrumental music that he had. He believed he was more qualified than Mr. Noffsinger and should be retained.

17. Laura Rutherford is the chorale director at Chino Hills High School and has a bachelor's degree with a chorale emphasis. She has been with the District for nearly eight years, but will be bumped by Pamela Bell, who has been with the District for nearly 17 years. She testified that Ms. Bell was a general music teacher and not as well trained as she is. She testified she is an accomplished pianist and singer, and accompanies the choirs, thereby avoiding the necessity of having to hire an accompanist.

18. Douglas Jones teaches band at the elementary and junior high school levels. He has a bachelor's degree and a master's degree in music and has been teaching since 1986. He expressed his concern about the District's decision to reduce the music programs at his schools.

Reemployment

19. Denise Prindiville teaches fifth grade at Dickson and worked as a temporary teacher under a contract during the 2011-12 school year. She had been a permanent teacher with the District but had been laid off a few years ago. She had a dispute with the District at one time regarding her seniority date, but it has been corrected. The District's seniority list correctly reflects that her seniority date is August 28, 2002.

Ms. Prindiville testified that she is on the Temp-39 Month list as number 1301, but believes she should be placed between number 893 and 894 on the seniority list to reflect her seniority date.

Ms. Prindiville's issue relates to the reemployment process. Her seniority date is correct. Her issue is beyond the scope of this hearing.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter relating to the elimination of 116.25 full-time equivalent positions exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. Education Code section 44955 provides in relevant part:

...

“(b) [W]henver a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year . . . and when in the opinion of the governing board of the district it shall have become necessary . . . to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render. . . As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

(c) ...

The governing board shall make assignments and reassignments in such a manner that the employees shall be retained to render any service which their seniority and qualifications entitle them to render. . .

...

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services

credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.”

To put it more succinctly, a senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. See *Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469. Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. See *Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; see also *Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831.

3. A Governing Board may reduce, discontinue or eliminate a particular kind of service and then provide the needed services to the students in another manner. (*Hidlebrand v. St. Helena Unified School District* (2009) 172 Cal. App. 4th 334, 343; *Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571; *California Teachers Association v. Board of Trustees of Goleta Union School Dist.* (1982) 132 Cal.App.3d 32; *Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 812.) A school board may reduce services within the meaning of the statute either by determining that a certain type of service shall not be performed at all or by reducing the number of district employees who perform such services. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

The District has chosen to eliminate all its counseling positions. Mr. Enfield testified that the District intends to provide the requisite services in ways other than through the use of employed counselors. Factual Finding 13. Respondents point to no statutory requirement that the District must employ counselors. By utilizing non-counselors instead of counselors, the district will be providing services in a different manner. The fact that the district does not yet have a plan specifying how some of the counselors’ duties will be performed next year does not mean that the district’s elimination of counseling positions is arbitrary and capricious, as respondents seem to imply. Based upon Mr. Enfield’s representation that the Board would provide the counseling services currently provided by its own employees, the Board’s decision to eliminate all counseling positions must be upheld.

The same is true of nursing services. While it is readily apparent that the many services performed by school nurses for the District and its students cannot be replaced, it is only the mandated services that must be performed. Mr. Enfield’s testimony established that mandated services will be performed by the District, but at this point it has not been determined in precisely what manner. Factual Finding 11. That is sufficient to uphold the Board’s decision to eliminate nursing services.

4. The testimony offered by respondents relating to music raises several issues. Ms. Robb, Mr. Jenkins, and Ms. Rutherford testified that, although they are junior teachers, they should not be bumped by more senior teachers because they are better qualified to provide services to the students of the District. In essence, their argument is that they should be skipped under section 44955, subdivision (d). However, there is no requirement that a school district must exercise the authority conferred on it by that section, and it is apparent that the Board chose not to exercise it. In the absence of a decision by the Board to skip junior teachers under subdivision (d), section 44955, subdivision (b) requires that the more senior teachers be retained if they are certificated and competent to render the services. The District's seniority list establishes that the senior music teachers who bumped Ms. Robb, Mr. Jenkins, and Ms. Rutherford were certificated and competent to render music services. Accordingly, the layoffs of Ms. Robb, Mr. Jenkins, and Ms. Rutherford must be upheld.

5. Any additional arguments offered by respondents have been considered and are rejected.

6 Cause exists under Education Code sections 44949 and 44955 for the District to discontinue particular kinds of services relating to 116.25 full-time equivalent positions. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. A preponderance of the evidence sustained the charges set forth in the Accusation. It is recommended that the Board give respondents notice before May 15, 2012, that their services will no longer be required by the District.

ORDER

1. The Accusations served on respondents Lisa Bader, Daura Beard, Amber Condit, and Laura Iacopetti are dismissed.

2. The Accusations served on the respondents listed on Exhibit A are sustained. Notice shall be given to each respondent before May 15, 2012 that his or her services will not be required for the 2012-13 school year pursuant to the Board's resolution because of the reduction of particular kinds of services.

Notice shall be given in inverse order of seniority.

DATED: April 5, 2012

ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

EXHIBIT “A”

Chino Valley Unified School District

FINAL LAYOFF LIST

The following certificated personnel will receive a final layoff notice:

1. 587 Altenburg, Jeannetta
2. 864 Alvarez, Sherry
3. 1284 Anderko, Chelsea
4. 1131 Aquino, Rachel
5. 899 Atwell, Melissa
9. 1286 Beedle, Katrina
10. 1101 Behounek, Lisa
11. 953 Bekins, Jennifer
12. 1282 Beruman, Shifon
13. 1285 Berwick, Rochelle
14. 1288 Blanchard, Leeanne
15. 1047 Borgogno, Krista
16. 862 Butorac, Christine
17. 1199 Carranza, Mario
18. 1260 Chen, Vincent
19. 1175 Chiotti, Michelle
20. 1098 Ciszek, Laurie
22. 901 Crawford, Julie
23. 1344 Cummins, Lindsey (temp. release)
24. 1136 DeLeon, Steven
25. 886 Donohue, Renee
26. 1044 Doug, Jones
27. 1343 Espinoza, Karen (temp. release)
28. 1342 Fernandez, Desiree (temp. release)
29. 1217 Ferreira, Kristen
30. 734 Fierro-Purcell, Anna
31. 1039 Flores, Elvia
32. 857 Gallegos, Elizabeth
33. 1134 Garcia-Prieto, Dorinda
34. 698 Gironas, Kattia
35. 1279 Gomez, Raul
36. 1353 Gonzales, Sandra (temp. release)
37. 855 Han, Allison

38.	AE	Hatch, Beverly
39.	397	Heisel, Gail
40.	898	Hellings, Heather
41.	1194	Hinkle, Constance
42.	652	Hobby, Bobbie
43.	1345	Hurtado, Joseph
45.	890	Jenkins, Sean
46.	1102	Jensen-Ward, Darcy
47.	1043	Jones, Douglas
48.	1235	Josselyn, Jennifer
49.	1224	Kent, Melanie
50.	1212	Khouzam, Joseph
51.	AE	Kuhns-Helm, Alisa
52.	869	Lagunas, Silvia
53.	1165	Leung, Monica
54.	1190	Lewis, Roberta
55.	1104	Lopez, Elizabeth
56.	1287	Luu, Diana
57.	435	Ma, Sherry
58.	887	Miner, Karen
59.	1266	Montanez, Antonio
60.	1278	Moore, Teressa
61.	1347	Morar, Sangeeta
62.	573	Moser, William
63.	999	Murillo, Denise
64.	1290	Murphy, Daniel
65.	863	Murray, Alecia
66.	1258	Nakamura, Nicholas
67.	1038	Nguyen, Cherrie
68.	186	O'Keefe, Martha
69.	817	Orioli, Zahira
70.	61	Palliasch, Jami
71.	735	Parks, Susan
72.	868	Reading, Jennifer
73.	751	Reynolds, Leila
74.	720	Rich, Nancy
75.	1031	Robb, Anne
76.	1142	Robertson, Matthew
77.	649	Rodriguez, Aaron
78.	1218	Rogers, Nancy
79.	1291	Royster, Darryl
80.	973	Rutherford, Laura

81. 390 Sandoval, Carolina
82. 893 Sellitto, Stephanie
83. 892 Smith, Donna
84. 861 Southard, Kelly
85. 850 Spaun, Tina
86. 906 Staunton, Marcia
87. 865 Talley, Roger
88. 1120 Theis, Mary
89. 1345 Thomas, Janet (temp. release)
90. 1349 Torres, Isabel (temp. release)
91. 1093 Walter, Kathryn
92. 900 Wicker, Tina
93. 1119 Wroth, Chana
94. 578 Zuk, Karen
95. 1261 King, Alexis